

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DANIEL SIEGFRIED,	)	
	)	
Plaintiff,	)	Civil Action No. 07-118-GMS
	)	
v.	)	
	)	
McNEIL CONSUMER & SPECIALTY	)	
PHARMACEUTICALS, A DIVISION OF	)	
McNeil-PPC, INC., a foreign corporation,	)	JURY TRIAL DEMANDED
JOHNSON & JOHNSON-MERCK	)	
CONSUMER PHARMACEUTICALS CO.,	)	
a foreign corporation, and JOHNSON &	)	
JOHNSON, a foreign corporation,	)	
	)	
Defendants.	)	

**ANSWER OF DEFENDANTS, MCNEIL CONSUMER & SPECIALTY  
PHARMACEUTICALS, JOHNSON & JOHNSON-MERCK CONSUMER  
PHARMACEUTICALS CO. AND JOHNSON & JOHNSON, TO PLAINTIFF'S  
COMPLAINT WITH AFFIRMATIVE DEFENSES**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment.

2. Admitted.

3. Admitted.

4. Admitted.

**JURISDICTION**

5. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, incorporate herein by reference paragraphs 1 through 4 above inclusive as though the same were set forth at length.

6. Denied.

**FACTUAL ALLEGATIONS**

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment.

8. Denied as stated. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, deny any wrongful or liability producing conduct on their part. By way of further response, it is denied that the incident alleged in the Complaint proximately resulted in any injuries, damages and/or losses to the plaintiff.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

**COUNT I**

**CLAIM AGAINST MCNEIL**

13. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, incorporate herein by reference paragraphs 1 through 12 above inclusive as though the same were set forth at length.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20.(a) – (l). Denied.

**COUNT II**

**CLAIM AGAINST JOHNSON & JOHNSON-MERCK CONSUMER  
PHARMACEUTICALS CO.**

21. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, incorporate herein by reference paragraphs 1 through 20 above inclusive as though the same were set forth at length.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28.(a)- (l). Denied.

**COUNT III**

**CLAIM AGAINST JOHNSON & JOHNSON**

29. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, incorporate herein by reference paragraphs 1 through 28 above inclusive as though the same were set forth at length.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36.(a) – (l). Denied.

#### **CLAIM IV**

#### **CLAIM OF DANIEL SIEGFRIED**

37. Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, incorporate herein by reference paragraphs 1 through 36 above inclusive as though the same were set forth at length.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff assumed the risk of his activities.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his injuries, damages and/or losses.

#### **FOURTH AFFIRMATIVE DEFENSE**

No conduct on the part of answering defendants constituted the proximate cause of plaintiff's alleged injuries, damages and/or losses.

#### **FIFTH AFFIRMATIVE DEFENSE**

To the extent that the negligence of plaintiff, Daniel Siegfried, is determined to be greater than fifty percent of the total percentage of fault, then that negligence bars recovery. In the event that the negligence of plaintiff, Daniel Siegfried, is fifty percent or less, the recovery must be reduced by the percentage of fault attributed to the plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries pre-existed the June 5, 2005 incident or are otherwise unrelated to the alleged accident.

**SEVENTH AFFIRMATIVE DEFENSE**

Medical expenses and lost wages are limited by 21 Del. C. § 2118.

**EIGHTH AFFIRMATIVE DEFENSE**

Special damages are not set forth with specificity.

**NINTH AFFIRMATIVE DEFENSE**

The incident in question was caused by parties, persons, entities, circumstances, actions, forces and instrumentalities over whom/which defendants had no control or right to control and for whom/which defendants had no responsibility.

**RESERVATION OF IME RIGHTS**

Defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, specifically reserve the right to require plaintiff, Daniel Siegfried, to undergo an independent medical examination at a time and place convenient for the parties.

WHEREFORE, defendants, McNeil Consumer & Specialty Pharmaceuticals, Johnson & Johnson-Merck Consumer Pharmaceuticals Co. and Johnson & Johnson, deny all liability, demand that plaintiff's Complaint be dismissed with prejudice and demand judgment in their

favor and against plaintiff, together with costs and such other relief as the Court deems appropriate.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: /s/ Kevin J. Connors  
KEVIN J. CONNORS, ESQ.  
DE Bar ID: 2135  
1220 North Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899-8888  
Attorney for Defendants, McNeil Consumer &  
Specialty Pharmaceuticals, Johnson & Johnson-  
Merck Consumer Pharmaceuticals Co. and  
Johnson & Johnson

Dated: April 9, 2007

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McNEIL CONSUMER & SPECIALTY	)	
PHARMACEUTICALS, A DIVISION OF	)	
McNeil-PPC, INC., a foreign corporation,	)	JURY OF SIX DEMANDED
JOHNSON & JOHNSON-MERCK	)	
CONSUMER PHARMACEUTICALS CO.,	)	
a foreign corporation, and JOHNSON &	)	
JOHNSON, a foreign corporation,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

I, Kevin J. Connors, hereby certify that two (2) copies of the **ANSWER OF DEFENDANTS, MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS, JOHNSON & JOHNSON-MERCK CONSUMER PHARMACEUTICALS CO. AND JOHNSON & JOHNSON, TO PLAINTIFF'S COMPLAINT WITH AFFIRMATIVE DEFENSES** have been served by E-File and Regular Mail to the following:

Matthew R. Fogg, Esquire  
1202 Kirkwood Highway  
Wilmington, DE 19805

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: /s/ Kevin J. Connors  
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